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Report of the United Nations High Commissioner for Refugees: questions relating to refugees, returnees and displaced persons and humanitarian questions

New international humanitarian order

Report of the Secretary-General

1. At its fifty-first session, the General Assembly, in its resolution 51/74 of 12 December 1996, took note of the reports of the Secretary-General (A/37/145, A/38/450, A/40/348 and Add.1 and 2, A/41/472, A/43/734 and Add.1, A/45/524, A/47/352, A/49/577 and Corr.1 and A/51/454), and expressed its appreciation for his continuing support for the efforts to promote a new international humanitarian order. The Assembly also requested Governments to make available to the Secretary-General, on a voluntary basis, information and expertise on humanitarian issues of special concern to them, in order to identify opportunities for future action. It also invited the Independent Bureau for Humanitarian Issues to continue and to further strengthen its activities in cooperation with the governmental and non-governmental organizations concerned. The Assembly requested the Secretary-General to remain in contact with Governments and non-governmental organizations, including the Independent Bureau for Humanitarian Issues, and to report to it on the progress made by them at its fifty-third session, at which it would review the question of a new international humanitarian order.

2. Since the inclusion of the item entitled "new international humanitarian order" on the agenda of the thirty-sixth session of the General Assembly, the Secretary-General has presented nine reports and transmitted to the Assembly the views of 48 Governments and a number of specialized agencies and non-governmental organizations. Once again, pursuant to Assembly resolution 51/74, the Secretary-General, on 23 June 1998, addressed communications to Governments and a number of non-governmental organizations requesting their contributions, views and information on the progress made by them in the implementation of the resolution. As at 1 October 1998, comments on the subject had been received from the Governments of Bosnia and Herzegovina, Monaco, the Netherlands and Jordan and from the Independent Bureau for Humanitarian Issues. The texts of those communications are annexed to the present report. Input was also received from the Food and Agriculture Organization of the United Nations, the United Nations Children's Fund, the World Food Programme and the World Health Organization, which reported on activities related to the field of humanitarian assistance.

3. The contribution of the Independent Bureau for Humanitarian Issues underlines the need to further build upon and strengthen existing humanitarian instruments and mechanisms in order to ensure rigorous respect for humanitarian norms and to devise more effective means of implementing humanitarian programmes of assistance.

4. The attention of the General Assembly is also called to the reports of the Secretary-General submitted pursuant to its resolution 46/182 (A/50/203-E/1995/79, A/51/172-

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E/1996/77, E/1997/98, A/52/443 and A/53/139-E/1998/67) and subsequent resolutions on the strengthening of the capacity of the United Nations system to respond to humanitarian emergencies. In those reports, the Secretary-General addressed questions relevant to the development of a new international humanitarian order (Assembly resolutions 47/168, 48/57, 49/139 A and B, 50/57, 51/194 and 52/168 and Economic and Social Council resolution 1995/56).

Annex

Replies received from Governments and the Independent Bureau for Humanitarian Issues

Bosnia and Herzegovina

[Original: English]
[28 September 1998]

1. During the long and tragic armed conflict that ravaged the country, the Government and people of Bosnia and Herzegovina recognized the need for promotion of a new international humanitarian order. The war, which caused widespread suffering and massive loss of life and property and gave rise to the challenging problem of internally displaced persons and refugees, also increased our sensitivity to humanitarianism and our craving for peace and stability. The request by the Secretary-General for views of Governments in the context of resolution 51/74 is a welcome opportunity to share the lessons learned and thus contribute to further improvement of the international humanitarian response system.

2. The Government of Bosnia and Herzegovina commends the efforts by the Secretary-General to strengthen and streamline the humanitarian aspects of the work of the United Nations as a part of the overall process of reform of the Organization. Aware of the importance of coordination within the United Nations system and the international donor community, we have also noted with satisfaction the establishment of the United Nations Office for the Coordination of Humanitarian Affairs and look forward to close cooperation with it.

3. The report of the Secretary-General of 12 June 1998 (A/53/139-E/1998/67) provides convincing proof of the growing awareness within and outside the United Nations of the need, on the one hand, to strengthen the coordination of emergency humanitarian assistance and, on the other, to adjust international response to new realities and challenges. The conclusions drawn by the Economic and Social Council on the basis of that report are a valuable contribution to further improvement of the international system. Many of those conclusions constitute, in fact, the building blocks of the new international humanitarian order.

4. On the basis of its experience in recent years and benefiting from expert advice of field workers, the Government wishes to make the following suggestions:

(a) While an impressive body of humanitarian and human rights law exists, the implementation mechanisms need to be strengthened in order to do full justice to the norms and principles that are universally accepted. It would be helpful to develop strategies for rigorous implementation, not only of aid programmes but also for respect of norms and principles;

(b) Linked to the question of implementation is the essential function of monitoring, which also needs to be further strengthened. In addition to developing more elaborate guiding principles of monitoring, it is essential to organize rigorous and intensive training of monitors before they are sent to the field;

(c) The programmes of humanitarian assistance would stand to gain considerably if the United Nations were to organize, at regular intervals, "external" evaluations of its projects and programmes;

(d) While coordination within the United Nations system is already receiving the attention it deserves, it is important that the mechanism used include the regional and bilateral sources of aid in order to ensure an integrated and holistic approach from the outset.

5. Taking into account the conclusions of the humanitarian segment of the last substantive session of the Economic and Social Council, in July 1998, and inspired by its own experience of humanitarian action in emergency situations, the Government of Bosnia and Herzegovina feels that it would be useful and timely if a set of principles were adopted by the General Assembly in order to regulate the conduct of all the actors and stakeholders and to enhance the impact of external aid. With this objective in mind, the Government proposes that the following basic tenets be considered for adoption by the General Assembly by way of standard-setting and as part of the process of international legislation relating to humanitarian action:

(a) Humanitarian action shall be undertaken in all situation that constitute an emergency when essential human needs are not being met and abandonment of people affected by the emergency would constitute a massive threat to human life, cause widespread suffering and grave offence to human dignity;

(b) Humanitarian action must ensure the survival, protection and fulfilment of the basic needs of people, irrespective of their origin, race, religion, gender or affiliation to a social or political group, in conformity with humanitarian law, principles and practices;

(c) The scale and scope of humanitarian action must be determined principally on the basis of identified needs;

(d) Root causes of humanitarian emergency situations must be addressed in a timely and effective manner, not only at the site of an emergency but in all areas and with all actors concerned;

(e) Humanitarian action must not replace the search for solutions to political problems and even less be used to buy time;

(f) Regional organizations and institutions must play a key role in preventive, curative and consolidation measures in situations of actual and potential emergencies;

(g) Humanitarian action must neither weaken nor marginalize local structures but rather strengthen the capacity of local communities and entities;

(h) A negative impact of humanitarian assistance on local economies must be avoided. To this end, thorough study and regular monitoring of local markets and overall conditions must be an integral part of the planning and implementation processes;

(i) Endangered persons must be treated as human beings entitled to human rights and freedoms and not as helpless victims;

(j) Endangered populations have the right to stay in their places of habitual residence or to temporarily seek safety and security elsewhere. No one shall be involuntarily dislocated at times of humanitarian emergencies;

(k) It is primarily the duty of the States concerned to ensure the protection, safety and well-being of the populations affected by emergencies;

(l) It is the responsibility of international and national humanitarian agencies that provide assistance to ensure, through monitoring, the proper use of such assistance and its impact on the affected populations, and to contribute to their protection and safety;

(m) For rapid deployment of humanitarian actors, it is essential to establish a standby arrangement, adequate capacity and a modus operandi involving mandatory coordination;

(n) Where the magnitude and duration of a humanitarian emergency are beyond the response capacity of affected countries, international cooperation and assistance must be provided. This must be done in accordance with international law and practice;

(o) People affected by humanitarian emergency situations must be regarded as resourceful human beings entitled to participate in the planning and implementation of assistance that they have the right to request and receive;

(p) The State and conflicting parties are required to adhere to the humanitarian imperative and facilitate safe and easy access to endangered populations and affected areas for rapid provision of humanitarian assistance;

(q) States in proximity to humanitarian emergency situations, particularly in regions that are difficult to reach, are required to observe the humanitarian imperative by facilitating the transit of humanitarian assistance and by participating in the international aid efforts to the extent possible;

(r) The use of humanitarian assistance for purposes other than those for which it is intended is prohibited;

(s) Humanitarian action in emergency situations must be pursued to the greatest possible extent in a way that links relief and rehabilitation to developmental activities;

(t) In the context of international cooperation, the principle of burden-sharing shall be applied to all humanitarian actions.

6. The basic tenets enumerated above draw upon discussions in various forums and upon norms already accepted although not always respected. The Government of Bosnia and Herzegovina sincerely hopes that in the context of discussion of the agenda item relating to the new international humanitarian order, the General Assembly, through its Third Committee, will favourably consider the adoption of these basic tenets as a part of the ongoing process of international legislation in the humanitarian field.

Jordan

[Original: English]
[2 October 1998]

1. The Government of the Hashemite Kingdom of Jordan notes with satisfaction that since the concept of the "new international humanitarian order" was first introduced by His Royal Highness Crown Prince Hassan in his address to the General assembly, the latter has adopted without a vote a number of resolutions in support of it. The report of the Independent Commission on International Humanitarian Issues, which was one of the results of this proposal, was considered by the General Assembly and, as noted in the report of the Secretary-General dated 4 October 1996 (A/51/454), more than 120 of the 160 specific recommendations made by it have been implemented and incorporated into national and regional policies or have served as guidelines for action.

2. Now as the world gets ready to enter the new millennium, it will be useful for the international community to do humanitarian stock-taking in order to better prepare the future generations for the ordeals that await them. Regrettably, many of the humanitarian issues identified by the Independent Commission remain unresolved; some of them, such as internal conflicts and the attendant problems of refugees and displaced persons, have grown in magnitude and complexity in recent years. The need for strengthening international solidarity and cooperation has never been greater. The Government of Jordan is of the view that the agenda item it proposed in the early 1980s is even more relevant in the late 1990s: it should be used essentially as an opportunity for Member States to generate and articulate new ideas and to provide impetus for concrete action to be initiated in the appropriate forums.

3. At the time the Government of Jordan proposed the agenda item relating to the new international humanitarian order, it pointed out that its purpose was not to question the existing humanitarian instruments and mechanisms but rather to build on them and thus strengthen the international response to humanitarian challenges. The aim was, firstly, to encourage the updating and adjustment of the existing instruments and practices to new realities, as was done in 1977 when two protocols were added to the four Geneva Conventions of 1949 relating to the law of war, or earlier, in 1967 when a protocol was added to extend the scope of the 1951 Convention relating to the status of refugees. In both cases, new realities (namely, the evolving nature of internal conflicts and the emergence of internally displaced persons, a problem bigger in scale than that of refugees) have, in recent years, called for further scrutiny of the underlying issues by the world community. Secondly, the aim of the Jordanian proposal was to identify new humanitarian issues calling for adequate international responses. The Independent Commission identified some of them; others are emerging as one part of the world community continues to prosper through advances in technology and communications while the other part is still struggling against poverty and underdevelopment as it faces humanitarian challenges, old and new. Consequently, the need to keep under active review the new international humanitarian order that began to emerge after the Second World War is even greater today than it was at the time the Government of Jordan proposed the item to the General Assembly.

4. While man's inhumanity to man continues to manifest itself in the form of genocide, ethnic cleansing, increasingly complex problems of internal conflicts and massive forced displacement of populations, notable progress is being made in the framework of the United Nations to address these problems and their root causes. The Government of Jordan welcomes the result of the United Nations Conference on the Establishment of an International Criminal Court and looks forward to the positive results its work will yield for innocent populations, which pay the price for inhuman decisions of individuals. The Government also welcomes the coming into force of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction.

5. It is clear that peace is durable not when it is achieved through negotiations but, above all, when it is built and consolidated at the grass-roots level. The increasing attention being paid to peacemaking and peace-building in addition to the traditional peacekeeping role of the United Nations is a positive development. It is recalled in this connection that when proposing the agenda item relating to the new international humanitarian order, the Government of Jordan had emphasized that the "law of peace" needs to be legislated and practised as thoroughly as the "law of war" has been developed, however difficult and complex the process may be. In this context, the dissemination of and education in fundamental human rights and freedoms, a community-based approach to peace and development and a vigorous effort at local capacity-building are examples of practical actions that the international donor community should support.

6. The Government of Jordan welcomes the initiative in the Commission on Human Rights regarding the linkage between human rights and the twin issues of poverty and development. An equally important linkage exists between development and peace. There is increasing recognition of the fact that development without peace is not possible and peace without development is not possible. It is hoped that the agenda item relating to the new international humanitarian order can provide impetus for identifying and exploring such linkages and the conceptual input they call for in order to facilitate policies and future activities of the United Nations system.

7. In the framework of the Secretary-General's effort regarding renewal and reform of the United Nations, the Government of Jordan welcomes the establishment of the Office for the Coordination of Humanitarian Affairs, and hopes that in addition to addressing the practical problems such as humanitarian emergency aid issues, it will pay equally vigorous attention to the conceptual and normative role of the world body. In this regard, the Government of Jordan looks forward to close cooperation with the Office.

8. The Government of Jordan is of the view that the full potential of the agenda item relating to the new international humanitarian order is yet to be realized. It has been useful as an umbrella item for those humanitarian concerns that are not clearly covered by other agenda items. In this connection, the Government has noted with satisfaction the constructive discussions in the framework of the humanitarian segment of the Economic and Social Council. Now that more detailed attention is being paid to humanitarian issues and the role of the international community, it is the hope of the Government of Jordan that the future discussions under the agenda item relating to the new international humanitarian order would be a constructive contribution to, and a useful component of, the overall effort of the United Nations system in the humanitarian field.

Monaco

[Original: French]
[27 July 1998]

1. The Principality of Monaco and its sovereign, His Serene Highness Prince Rainier III, attach considerable importance to the observance, development and strengthening of international humanitarian law. As the last refuge against savagery and against practices which violate the dignity and physical integrity of the individual, the principles and norms established and unanimously recognized at the international level must be immediately and strictly applied as soon as a conflict, whether internal or international, breaks out or humanitarian emergencies arise.

2. Monaco's highest authorities welcome and endorse the conclusions of the Security Council debate of 29 June 1998 on the item "Children and armed conflict" and unreservedly support the statement by the President of the Council in document S/PRST/1998/18, which strongly condemns the targeting of children in armed conflicts.

3. Like the Security Council, the Government of Monaco calls for unconditional compliance with all humanitarian obligations arising under current international law, in particular the Geneva Conventions of 1949, the Additional Protocols of 1977 and the Convention on the Rights of the Child.

4. In this connection, it also believes that States have an unconditional obligation to prosecute those responsible for grave breaches of international humanitarian law.

5. In order to promote and strengthen respect for international humanitarian law, of which there have been many grave breaches recently, States should give, in whatever form, or renew without restrictions or reservations, firm, resolute international undertakings designed to ensure the protection of the weakest and most vulnerable people as soon as a humanitarian emergency arises and the international community acknowledges its existence by a declaration at the highest levels – the Security Council, the General Assembly, committees or competent treaty bodies.

6. The measures already advocated by the Government of Monaco, at the personal initiative of His Serene Highness the Prince of Monaco, include proposals for the establishment, in times of armed conflict and in humanitarian emergencies, of inviolable zones where women, children and the elderly, as well as sick, disarmed and wounded, and hence defenceless, persons can be safeguarded. Such zones would be placed under the control and protection of neutral, impartial humanitarian personnel and under the responsibility of competent bodies.

7. Access corridors to such humanitarian zones would have to be established, controlled and monitored by qualified staff, to permit food, medical and relief supplies to reach the defenceless populations who took refuge therein.

8. Any attack on or violation of such zones would have to be prosecuted, and persons found guilty of such attacks or violations would be handed over to national courts or, failing that, to any international criminal court established for this purpose. Once the International Criminal Court, the statute of which was signed in Rome on 17 July 1998 by the plenipotentiaries of a significant majority of States, including the Principality of Monaco, is functioning, it would be perfectly qualified to prosecute such acts.

9. No attack on a humanitarian zone would be allowed to go unpunished. The fact that such attacks were not subject to any statute of limitations and constituted war crimes and crimes against humanity would therefore have to be recognized and publicized in order to act as a credible deterrent.

10. The United Nations, in cooperation with competent international agencies such as the International Committee of the Red Cross and the Sovereign Military Order of Malta, should devote itself to the task of drafting a binding treaty on the establishment, subject to precise conditions to be determined, of such humanitarian zones for the protection of defenceless civilians, of free, protected access corridors and of procedures for the prosecution by national criminal courts, or international courts, once domestic remedies have been exhausted, of war criminals and authors of crimes

against humanity who have violated such zones and their access corridors and have harmed civilians who took refuge therein.

The Netherlands

[Original: English]
[16 July 1998]

Regarding the implementation of resolution 51/74 on a new international humanitarian order, the Government of the Netherlands is of the opinion that the newly established humanitarian segment of the Economic and Social Council now seems to be the most appropriate forum to take this matter further.

Independent Bureau for Humanitarian Issues

[Original: English]
[28 September 1998]

Introduction

1. At its fifty-first session, the General Assembly, in its resolution 51/74 of 12 December 1996, invited the Independent Bureau for Humanitarian Issues (IBHI) to continue and to strengthen further its activities in cooperation with the governmental and non-governmental bodies concerned, including local and regional capacity-building to respond to humanitarian problems and to search for more effective measures to increase international cooperation in the humanitarian field.

2. The following paragraphs summarize the activities of the Independent Bureau since the adoption of the above-mentioned resolution and provide indications regarding its future activities in the context of the overall efforts to promote the new international humanitarian order.

Capacity-building

3. The specific mention of capacity-building at the local and regional levels in the General Assembly resolution served as a source of encouragement for the Independent Bureau to further strengthen its activities in this field. After its experience in Central Asia, the Bureau concentrated its efforts mainly in Afghanistan and Bosnia and Herzegovina. It has established offices in both countries, which have continued to function satisfactorily despite sporadic problems encountered in the field. In Bosnia and Herzegovina, IBHI has established an office in Republika Srpska in addition to the main office in Sarajevo. All parts of the country are covered through either temporary field offices or mobile teams. The Independent Bureau's capacity-building efforts have concentrated mainly on strengthening of civil society. In addition to the formation of and the provision of support to local non-governmental organizations, IBHI has also helped in institution-building through the provision of technical assistance to municipalities and cantons and advice to national authorities, notably in the field of social transition, return and rehabilitation of refugees and displaced persons and the overall democratization process. The Bureau plans to gradually expand its capacity-building activities to other war-ravaged areas, especially in the Balkans, the Caucasus, southern Africa and South Asia. The proposed expansion is based on its conviction that local capacity and institution-building in the humanitarian field is the most cost-effective and efficient way to accelerate the process of self-help and socio-economic development.

Action-oriented research

4. In addition to its original activities in pursuance of its mandate regarding the implementation of the recommendations of the Independent Commission on International Humanitarian Issues and their dissemination, the Bureau has also undertaken action-oriented research in a number of areas of concern to the international community in the humanitarian field.

5. A major study has been initiated in the field of transition of social policy in the ex-socialist countries, notably those countries facing simultaneously the twin challenges of post-war reconstruction and radical change of the political system. Since the end of the cold war considerable attention has been paid to economic transition of the ex-socialist countries, but comparable efforts have not been made in the social field. While addressing the problems of free-market economy, there is dire need to strengthen the social safety network. To begin with, a field-based study has been undertaken in Bosnia and Herzegovina as a pilot project.

6. Other current action-oriented research projects of the Bureau relate to: (a) the linkage between emergency relief efforts and development activities; (b) humanitarian assistance in the context of peacemaking, peacekeeping and peace-building activities; (c) potential population displacements in the Commonwealth of Independent States; and (d) the actual and potential role of armed forces in socio-economic development. Alongside the problem of refugees, the issue of internally displaced persons and the need for the related conceptual and legal framework also remain a matter of interest and concern to IBHI.

7. During 1999, IBHI will also join others in the activities foreseen in the context of the International Year of Older Persons, through publication in local languages, dissemination and advocacy of the rights of older persons.

8. The Bureau has also noted with satisfaction the recent initiatives taken by the Commission on Human Rights regarding human rights and poverty as well as human rights and development. The Bureau welcomes the emerging linkage between human rights and humanitarian issues, leading to an integrated approach to human well-being, and proposes to support the efforts of the United Nations system in this regard, notably those by the Office for the Coordination of Humanitarian Affairs and the Centre for Human Rights. Similar collaboration is also foreseen in the context of other IBHI reports under preparation.

Advocacy and dissemination

9. For enhancing awareness of international norms and standards in the humanitarian field, the Bureau recognizes the effectiveness of making available international documents to the general public and policy makers in their own language. It has consequently initiated a series of publications in local languages. Since the adoption of resolution 51/74 of 12 December 1996, nine books have been published by the Bureau ranging from human rights and humanitarian law to specific issues such as minority rights and the rights of women.

10. With the cooperation of the Office of the United Nations High Commissioner for Refugees (UNHCR), the Bureau has also continued its work related to the problem of statelessness as mentioned in the report of the Secretary-General dated 4 October 1996 (A/51/454). Four volumes containing nationality laws and regulations as well as relevant constitutional provisions have already been published. The fifth and final volume is under preparation. This series will update the volumes published by the United Nations in 1954 and 1959.

National and international legislation

11. At the national level, the Bureau provided, during the period under review, technical assistance and advice regarding formation and functions of local non-governmental organizations as well as on issues related to social policy and strengthening of social safety networks.

12. At the international level, the Bureau pursued its efforts to promote the basic tenets of humanitarian action in emergency situations as an exercise in international standard-setting. A detailed commentary has been prepared by the Bureau on those principles and standards that must be respected by States and other actors involved in emergency situations. It is hoped that the commentary would facilitate the consideration of this important subject for eventual action by the General Assembly.

13. The Bureau intends to propose similar standard-setting exercises intended to regulate the conduct of States in connection with the growing humanitarian problems relating to forced relocation of populations and mass expulsions.

14. The Bureau also intends to support efforts to broaden the scope of action by regional organizations as mentioned in Chapter VIII of the Charter of the United Nations in order to include humanitarian activities, notably in the context of preventive/containment actions and provision of assistance in emergency situations. It is worthwhile to note that the role of regional organizations in peacemaking and peacekeeping is steadily being strengthened. Comparable attention needs to be paid to the humanitarian and social dimension of the challenges faced by the international community in many parts of the world.

15. The Bureau remains committed to the view expressed by the Independent Commission on International Humanitarian Issues in its final report, namely, that humanitarianism is a basic orientation towards the interests and welfare of people. It demands that whatever detracts from human well-being must be questioned, regardless of its effects on economic growth, political power or the stability of a certain order. In this context, the Bureau remains mindful that while poverty and human well-being are interlinked, the former need not be defined only in economic and political terms. Likewise, social aspects of development must receive as much attention as the economic aspect.

Cooperation with the United Nations system

16. At the field level, in addition to networking with international and local non-governmental organizations, the Bureau has closely cooperated with the intergovernmental organizations involved in humanitarian programmes. In various countries where it has offices, IBHI also serves as an implementing partner of United Nations bodies such as the United Nations Development Programme, the Office for Project Services and UNHCR.

17. In the context of its activities related to normative and conceptual work and related action-oriented research, the Bureau also looks forward to further strengthening its cooperation with the Office for the Coordination of Humanitarian Affairs, the Centre for Human Rights and other United Nations departments, programmes and agencies dealing with humanitarian issues of mutual interest.